

DISTRICT ATTORNEY

KINGS COUNTY

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Eric Gonzalez

District Attorney

[INSERT NAME]

Assistant District Attorney

[INSERT DATE]

[INSERT D/C INFO]

Re: [INSERT CASE NAME]

Kings County Dkt./Ind. No. [#####]

In connection with the above-named case, the People voluntarily provide the following information regarding:

MOS NAME: **MALCOLM HART**

MOS TAX: **948044**

in satisfaction (to the extent applicable) of their constitutional, statutory, and ethical obligations. In addition to any information provided below, disciplinary information regarding this officer may exist online at the following websites: <https://www1.nyc.gov/site/ccrb/policy/MOS-records.page>, <https://nypdonline.org/link/13>, and <https://www50-a.org>. The People make no representation regarding the accuracy of any information contained on these websites. In addition, the People have provided all lawsuits known to the People through NYPD documents, the NYC Law Department's public website of civil suits filed against officers (<https://www1.nyc.gov/site/law/public-resources/nyc-administrative-code-7-114.page>), and orally relayed to the People by officers. Please note that additional cases may or may not exist on the following public websites: <https://pacer.uscourts.gov/> <https://iapps.courts.state.ny.us/webcivil/FCASMain>; and <https://iapps.courts.state.ny.us/nyscef/Login>. The People reserve the right to object to the use or introduction of any or all disclosures provided below and any other potential impeachment information.

Disclosure # 1:

THE PEOPLE ARE AWARE OF THE FOLLOWING FEDERAL CIVIL RIGHTS ACTION(S) AND/OR STATE TORT CIVIL LAWSUIT(S) IN WHICH THE INDICATED OFFICER HAS BEEN NAMED AS AN INDIVIDUAL DEFENDANT. NOTE, THE DISPOSITION INFORMATION MAY NOT BE CURRENT:

1. RAHMEL GEORGE V. CITY OF NEW YORK. ET AL. 309230-2011, FILED IN BRONX COUNTY SUPREME COURT
2. VICTOR SUMTER V. CITY OF NEW YORK, ET AL, 12-CV-305451, FILED IN BRONX COUNTY SUPREME COURT
3. GEORGE MACK V. CITY OF NEW YORK, ET AL 025248/2014 FILED IN BRONX COUNTY SUPREME COURT
4. BORIS KYKOV V. CITY OF NEW YORK, 300520/2017 FILED IN BRONX SUPREME COURT ON 03/15/2017 AND SETTLED ON 09/24/2019.
5. DAQUAN CARRASCO V. CITY OF NEW YORK, FILED ON 020377/2013 IN BRONX SUPREME COURT, DISPOSITION STATUS UNKNOWN.

Disclosure # 2:

MOS HART WAS FOUND GUILTY AFTER DEPARTMENTAL TRIAL TO THE FOLLOWING CHARGES AND SPECIFICATIONS, DATED ON OR ABOUT FEBRUARY 9, 2016, WHILE ASSIGNED TO THE 42ND PRECINCT:

ALLEGATION(S):

1. MOS HART, WHILE ON-DUTY, MADE AN ATTEMPT TO ENGAGE ON-DUTY SUPERVISOR LIEUTENANT IN A PHYSICAL ALTERCATION.
2. MOS HART, WHILE OFF-DUTY, FAILED TO NOTIFY THE 42ND PRECINCT DESK OFFICER HE WAS DISMISSED FROM BRONX CRIMINAL COURT AT APPROXIMATELY 0915 HOURS AND WAS NOT REQUIRED TO RETURN TO COURT UNTIL 1415 HOURS.

3. MOS HART, WHILE ON-DUTY, WAS DISMISSED FROM BRONX CRIMINAL COURT AT APPROXIMATELY 0915 HOURS AND FAILED TO IMMEDIATELY RETURN TO THE 42ND PRECINCT FOR APPROXIMATELY THREE (3) HOURS.
4. MOS HART, ASSIGNED TO THE 42ND PRECINCT, WHILE ON-DUTY FAILED TO ANSWER A LIEUTENANT, WHEN HE WAS ASKED ABOUT HIS WHEREABOUTS

CASE STATUS: CLOSED ON 07/13/2017

ACTION TAKEN: ONE (1) YEAR DISMISSAL PROBATION AND FORFEITURE OF THIRTY-TWO (32) SUSPENSION DAYS PREVIOUSLY SERVED AND THIRTEEN (13) VACATION DAYS. THIS IS A SHARED PENALTY WITH DISCLOSURE # 3 BELOW.

NOTE: AS A RESULT OF TESTIMONY MOS HART PROVIDED IN THE DISCIPLINARY TRIAL THAT WAS HELD REGARDING THIS INCIDENT, THE DEPARTMENT JUDGE FOUND AT LEAST A PORTION OF THAT TESTIMONY INCREDIBLE. THE JUDGE'S DECISION AND RELATED NYPD DOCUMENTS ARE ATTACHED BELOW

Disclosure # 3:

MOS HART ENTERED A PLEA OF GUILTY TO THE FOLLOWING DEPARTMENT CHARGES AND SPECIFICATIONS, WHILE ASSIGNED TO THE 42ND PRECINCT:

ALLEGATION(S):

1. MOS HART, ON OR ABOUT FEBRUARY 16, 2015 AND FEBRUARY 28, 2015, REPORTED LATE FOR DUTY A TOTAL OF FOUR (4) TIMES AND FOR A TOTAL OF ONE HOUR AND TEN MINUTES.
2. MOS HART, ON FEBRUARY 23, 2015, WHILE OFF-DUTY, OPERATED HIS PERSONAL VEHICLE IN A RECKLESS MANNER IN THAT HE DROVE THE VEHICLE AT A HIGH RATE OF SPEED, THROUGH SEVERAL STEADY RED LIGHTS AND STOP SIGNS WITHOUT STOPPING.
3. MOS HART, ON FEBRUARY 23, 2015, WHILE OFF-DUTY, OPERATED HIS PERSONAL VEHICLE IN A RECKLESS MANNER AND FAILED TO OBEY A LIEUTENANT OF THE PARKCHESTER DEPARTMENT OF PUBLIC SAFETY WHEN ON SEVERAL OCCASIONS, A LIEUTENANT ORDERED HIM TO STOP AND PULL OVER.
4. MOS HART, ON FEBRUARY 23, 2015, WHILE OFF-DUTY, OPERATED HIS PERSONAL VEHICLE IN A RECKLESS MANNER IN THAT HE DROVE THROUGH A STEADY RED LIGHT.
5. MOS HART, ON JULY 13, 2015, FAILED TO NOTIFY THE DEPARTMENT HE WAS RUNNING LATE FOR DUTY AND AS A RESULT HIS COMMAND WAS UNAWARE OF HIS WHEREABOUTS UNTIL APPROXIMATELY ONE HOUR AFTER THE START OF HIS TOUR.
6. MOS HART, ON JULY 13, 2015, OPERATED A MOTORCYCLE AND DID NOT HAVE A VALID NEW YORK STATE CLASS M LICENSE.

ACTION TAKEN: ONE (1) YEAR DISMISSAL PROBATION AND FORFEITURE OF THIRTY-TWO (32) SUSPENSION DAYS PREVIOUSLY SERVED AND THIRTEEN (13) VACATION DAYS. THIS IS A SHARED PENALTY WITH DISCLOSURE # 2 ABOVE.

NOTE: AS A RESULT OF TESTIMONY MOS HART PROVIDED IN THE DISCIPLINARY TRIAL THAT WAS HELD REGARDING THIS INCIDENT, THE DEPARTMENT JUDGE FOUND AT LEAST A PORTION OF THAT TESTIMONY INCREDIBLE. THE JUDGE'S DECISION AND RELATED NYPD DOCUMENTS ARE ATTACHED BELOW

Disclosure # 4:

MOS HART WAS ADJUDICATED GUILTY OF THE FOLLOWING DEPARTMENT CHARGES AND SPECIFICATIONS ARISING OUT OF AN INCIDENT ON OR ABOUT AND BETWEEN SEPTEMBER 14, 2016 AND SEPTEMBER 15, 2016, WHILE ASSIGNED TO THE MANHATTAN COURT SECTION AND OFF DUTY:

ALLEGATION(S):

1. MOS HART, WHILE IN THE CONFINES OF NEW YORK COUNTY, OPERATED HIS VEHICLE ON THE HENRY HUDSON PARKWAY, A 50 MPH ZONE, AT A RATE OF SPEED IN EXCESS OF 80 MPH AND SWITCHED LANES IN AN ERRATIC MANNER.
2. MOS HART WAS DISCOURTEOUS TO A NEW YORK CITY POLICE OFFICER, ASSIGNED TO HIGHWAY 1, IN THAT SAID MOS REFERRED TO POLICE OFFICER AS A "DICKHEAD".
3. MOS HART, WHILE THE SUBJECT OF A VEHICLE STOP, DID FAIL AND NEGLECT TO REMOVE HIS DEPARTMENT IDENTIFICATION CARD FROM HIS WALLET AND PROVIDE IT TO ON-DUTY NEW YORK CITY POLICE OFFICER, ASSIGNED TO HIGHWAY 1.

ACTION TAKEN: ONE (1) YEAR DISMISSAL PROBATION. SUSPENSION OF THIRTY (30) DAYS AND THIRTY (30) VACATION DAYS.

Disclosure #5: (PENDING)

THE FOLLOWING ALLEGATIONS, DATED 04/28/2021, ARE PENDING AGAINST MOS HART:

1. FAILURE TO PREPARE COMPLAINT REPORT

CASE STATUS: PENDING

BASED UPON CCRB DOCUMENTS UP TO DATE THROUGH FEBRUARY 10, 2021, THE PEOPLE ARE AWARE OF THE FOLLOWING CCRB SUBSTANTIATED AND/OR PENDING ALLEGATIONS AGAINST THIS OFFICER:

Disclosure # 6: (PENDING)

CCRB CASE: 202100236

REPORT DATE: 01/11/2021

INCIDENT DATE: 12/28/2020

PENDING CCRB ALLEGATION(S):

1. FORCE - PHYSICAL FORCE

Disclosure # 7: (PENDING)

CCRB CASE: 202100274

REPORT DATE: 01/12/2021

INCIDENT DATE: 10/21/2020

PENDING CCRB ALLEGATION(S):

1. ABUSE - THREAT OF ARREST
2. ABUSE - THREAT OF ARREST

Eric Gonzalez
District Attorney
Kings County



POLICE DEPARTMENT CITY OF NEW YORK

January 9, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Malcolm Hart
Tax Registry No. 948044
Manhattan Court Section
Disciplinary Case No. 2015-14565 & 2016-15245

Charges and Specifications:

Disciplinary Case No. 2015-14565

1. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on or about February 6, 2015 and February 28, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: he reported late for duty a total of four (4) times and for a total of one hour and ten minutes. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

2. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on February 23, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: while off-duty Police Officer Hart operated his personal vehicle in a reckless manner in that he drove the vehicle at a high rate of speed, through several steady red lights and stops signs without stopping. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

3. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on February 23, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: while off-duty Police Officer Hart operated his personal vehicle in a reckless manner and failed to obey Lieutenant Tyrone Brockington of the Parkchester Department of Public Safety when on several occasions, Lieutenant Brockington ordered him to stop and pull over. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

4. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on February 28 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: while off-duty, Police Officer

Hart operated his personal vehicle in a reckless manner in that he drove through a steady ready light. *(As amended)*

P.G. 203-10, Page 1, Paragraph. 5 - GENERAL REGULATIONS

5. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on July 13, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: failed to notify the Department he was running late for duty and as a result his command was unaware of his whereabouts until approximately one hour after the start of his tour. *(As amended)*

P.G. 203-10, Page 1, Paragraph. 5 - GENERAL REGULATIONS

6. Said Police Officer Malcolm Hart, while assigned to the 42nd Precinct, on July 13, 2015, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit: he operated a motorcycle and did not have a valid New York State Class M license. *(As amended)*

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

VTL501

Disciplinary Case No. 2016-15245

1. Said Police Officer Malcolm Hart, assigned to the 42nd Precinct, while on-duty, on or about February 9, 2016, engaged in conduct prejudicial to good order, efficiency or discipline of the Department, to wit: said Police Officer Hart made an attempt to engage on-duty supervisor Lieutenant Archie Van Putten in a physical altercation.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

2. Said Police Officer Malcolm Hart, assigned to the 42nd Precinct, while off-duty, on or about February 9, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Hart failed to notify the 42nd Precinct Desk Officer he was dismissed from Bronx Criminal court at approximately 0915 hours and was not required to return to court until 1415 hours.

P.G. 211-01, Page 2, Paragraph 19 - COURT AND AGENCY
APPEARANCES

3. Said Police Officer Malcolm Hart, assigned to the 42nd Precinct, while on-duty, on or about February 9, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Malcolm Hart was dismissed from Bronx Criminal Court at approximately 0915 hours and failed to immediately return to the 42nd Precinct for approximately three (3) hours.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

4. Said Police Officer Malcolm Hart, assigned to the 42nd Precinct, while on-duty, on or about February 9, 2016, engaged in conduct prejudicial to the good order,

efficiency or discipline of the Department, to wit: said Police Officer Hart failed to answer Lieutenant Archie Van Putten, when he was asked about his whereabouts.

P.G. 203-10, Page 1, Paragraph 5 - GENERAL REGULATIONS

Appearances:

For the Department: Jessica Brenes, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Dates:

September 29 and 30, 2016

Decision:

Disciplinary Case No. 2015-14565: Guilty of Specifications 1, 2, 3, 4, 5 and 6;
Disciplinary Case No. 2016-15245: Guilty of Specifications 1, 2, 3 and 4.

Trial Commissioner:

ADCT Paul M. Gamble

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on September 29 and September 30, 2016. In Case Number 2015-14565, Respondent entered pleas of Guilty to Specifications 1 through 6 and offered evidence in mitigation of the penalty. With respect to Case Number 2016-15245, Respondent pled Guilty to Specifications 2 and 3 and offered evidence in mitigation of the penalty. Respondent, through his counsel, entered pleas of Not Guilty to Specifications 1 and 4.

Department Advocate's Office called Sergeant Siria Henriquez, Jessy Garcia, Andrew Brock, Sergeant Luis Pena, Police Officer Fred Washington, Sergeant Eva Pena and Lieutenant Archie Van Putten as witnesses. Respondent testified on his own behalf.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Guilty.

FINDINGS AND ANALYSIS

At issue in this case is whether Respondent wrongfully failed to respond to Lieutenant Archie Van Putten when he asked Respondent about his whereabouts on the morning of February 9, 2016, and, whether Respondent attempted to engage Lieutenant Van Putten in a physical altercation.

The testimony at trial established that the following facts were not in dispute. On February 9, 2016, Respondent reported to the 42nd Precinct and informed Sergeant Luis Pena, the Desk Officer, that he was going to Bronx Criminal Court for a court appearance. This day also happened to be Respondent's Regular Day Off (RDO). When Respondent reported to Sergeant Pena, he advised Respondent that Respondent had not had the appearance approved by Lieutenant Archie Van Putten, the Integrity Control Officer. Sergeant Pena passed along the court notification to Sergeant Siria Henriquez, the Assistant Integrity Control Officer, who verified that Respondent was indeed the arresting officer for the case on which he was scheduled to appear (T. 18). Henriquez granted conditional approval for the appearance and Respondent proceeded to court (*Id.*). Respondent met with the Assistant District Attorney assigned to his case, ADA Loiloi, and provided him a copy of his memo book.

Subsequent to Respondent's departure, Henriquez contacted Van Putten to advise him of some perceived irregularities in the notification process (T. 19, 187). At the time

Henriquez contacted him, Van Putten was *en route* to the 42nd Precinct but directed her to meet him at the Bronx Criminal Court (T. 188-189).

Henriquez proceeded to Bronx Criminal Court and met ADA Loiloai outside the building at approximately 1100 hours. Henriquez asked ADA Loiloai where Respondent was but he did not know (T. 20). Henriquez asked ADA Loiloai whether he had called the 42nd Precinct and represented that the notification for Respondent had been approved and he stated that he had not (*Id.*).

Shortly after 1000 hours, Van Putten arrived at the Criminal Court, where he and Henriquez met with ADA Loiloai and Bureau Chief Odalis Alonzo (T. 22, 190, 191).

ADA Loiloai stated that he had met with Respondent at 0900 hours for approximately 15 minutes; that he did not know Respondent's whereabouts at that time but he needed him for trial at 1415 hours (T. 22, 191). Van Putten and Henriquez attempted to locate Respondent in the Criminal Court building but were unsuccessful (T. 192). Henriquez also attempted calling Respondent on his mobile phone, leaving voicemail and text messages directing him to return to the 42nd Precinct (T. 193). Finally, Van Putten contacted the Desk Officer at the 42nd Precinct, Sergeant Luis Pena, and advised him that if he were to see Respondent, to have him remain at the precinct and await Van Putten's return (*Id.*).

Approximately 1130 hours, Van Putten was informed by Pena that Respondent had returned to the precinct (T. 194). Van Putten directed Pena to have Respondent stand by in the muster room (*Id.*).

At approximately 1200 hours, Van Putten and Henriquez returned to the 42nd Precinct and met Respondent in the muster room (T. 23, 195). Van Putten asked

Respondent where he was all morning and received no response. Van Putten asked Respondent again and still received no response. When Van Putten asked Respondent a third time and ordered him to answer on pain of possible suspension, Respondent replied, "Hospital" (T. 24, 25, 195). Van Putten informed Respondent that he would be suspended and walked out of the room with Henriquez (T. 24, 196). Van Putten proceeded to the precinct Commanding Officer's office and advised him that he was contemplating giving Respondent a command discipline (T. 196).

After Henriquez left the muster room, she stepped behind the Desk Officer's desk, then heard someone say "call an ambulance" (T. 25). Henriquez inquired what was going on and was informed that Respondent was having chest pains (*Id.*). Henriquez returned to the muster room to attempt to speak with Respondent again and asked him what hospital he had gone to (T. 26, 40). Henriquez also asked Respondent to open his jacket and scarf, as he appeared to be hyperventilating (T. 40). Henriquez left the muster room again and encountered Van Putten, whom she advised of Respondent's request (T. 197). Van Putten, in turn, briefed the Commanding Officer (*Id.*). Van Putten further directed Henriquez to contact ADA Loilo and inform him that Respondent would not be returning to the Criminal Court for the afternoon court appearance (*Id.*).

Emergency Medical Technicians responded to the 42nd Precinct and assessed Respondent (T. 25-27, 28, 69, 96, 164-165). He was placed in a stair chair and brought to the front of the precinct (T. 28, 70, 97). While in transit to the front door of the precinct, an altercation occurred, the nature of which is at issue. Respondent was eventually placed in an ambulance and transported to [REDACTED], where he was treated and released.

The following is a summary of the facts which are in issue. Sergeant Siria Henriquez testified that on the morning of February 9, 2015, Respondent spoke with her about a court appearance for that day (T. 17). Henriquez asked Respondent when he had been notified and he told her the night before (*Id.*). Henriquez asked the operations coordinator, Lieutenant Arguinzoni, whether Respondent had spoken with him about the appearance and Arguinzoni stated he had not (*Id.*). After Respondent had departed the precinct, Henriquez scrutinized the notification and discerned that it had been sent on February 5th, as opposed to February 8th, when Respondent told her he had received it (T. 19). Henriquez contacted Police Administrative Aide Davila, who confirmed receipt of the notification on February 5th. Davila further informed Henriquez that the Assistant District Attorney assigned to the case called her the same day to verify that the notification had been approved and represented to her that Respondent had informed him that it had been approved (*Id.*).

After Henriquez and Van Putten confronted Respondent about his court appearance, he was sweating, breathing heavily and looked angry (T. 57). Henriquez described his look as, "His eyes were very bulgy like. He looked upset" (*Id.*).

As Respondent was being transported from the muster room to the front exit of the precinct, he began to get up from the stair chair, saying, "Get off me, get off me" (T. 28). Henriquez could see other police officers surrounding Respondent and telling him to calm down (T. 31). Respondent appeared to be focusing his attention to his left, where Van Putten and Sergeant Eva Pena were standing (T. 30). At that point, Henriquez moved toward Van Putten and physically directed him to go into the Commanding Officer's office (*Id.*). After Henriquez had taken Van Putten out of the public area, she

returned to it and observed Respondent being held up against a water fountain by other police officers (T. 32). Henriquez then directed the EMT personnel to remove Respondent through the handicapped entrance to the precinct (*Id.*). Respondent then walked out of the precinct, entered an ambulance and was taken to the hospital (T. 33).

Jessy Garcia testified that she was one of the EMTs who responded to the 42nd Precinct to treat Respondent. After conducting an electrocardiogram, Garcia was unable to ascertain the reason for Respondent's heavy breathing; as a precautionary measure, she administered oxygen by face mask and directed that he be seen at a hospital (T. 70). Garcia assisted another EMT in strapping Respondent into the stair chair, with one strap going across Respondent's legs and another around his chest (T. 70-71). As Garcia's partner began wheeling Respondent out of the muster room, Respondent stated, "I don't want to see him, make sure he is not there, get him away from me" (T. 71). Garcia's partner continued to push Respondent toward the front door of the precinct, with Garcia leading the way. Garcia heard a noise behind her, turned around and observed Respondent unbuckling himself from the stair chair (T. 72-73). Garcia noticed that Respondent was facing his left and was yelling something, apparently at someone within his line of sight (T. 74). As Respondent came to a full standing position and attempted to move in the direction he was facing, five or six police officers began to hold him back, saying "Don't do it; it's not worth it" (*Id.*, 75-76).

Lieutenant Andrew Brock, a paramedic supervisor with the New York City Fire Department, testified consistent with Garcia's testimony to observing Respondent unbuckle himself from a stair chair, shout at someone, attempt to move toward that person and eventually be restrained by a number of police officers (T. 97-100).

Sergeant Luis Pena, who was the Desk Officer at the time of the incident, testified consistently with Henriquez, Garcia and Brock's observations of Respondent as he was being wheeled out of the precinct (T. 114-121).

Police Officer Fred Washington testified that he was present in the 42nd Precinct at the time of the incident and observed Respondent unbuckling himself from a stair chair, standing up and Police Officer Pluas holding him in a bear hug (T. 132, 135, 137). Washington observed Van Putten and Sergeant Eva Pena, who were standing in front of the precinct desk, running behind him (T. 132, 135). Washington ran to Respondent and held his arm (T. 136, 137). Washington heard Respondent say, "Are you laughing? Are you laughing?" to whomever was behind Washington (T. 138). Washington believed that Respondent "looked mad" (T. 139).

Sergeant Eva Pena testified that on February 9, 2016, she was present at the 42nd Precinct performing the role of Field Intelligence Officer (T. 160). There came a time when she was in her office and overheard a call on the police radio for an ambulance to respond to the 42nd Precinct (T. 161). Pena stepped out of her office and entered the muster room, where she saw Respondent (T. 162). Respondent was crying and complaining of chest pains (*Id.*). Pena asked Respondent if he wanted water and his response was, "I want to hurt him," over and over (T. 162-163). While waiting for the ambulance to arrive, Pena saw Van Putten enter the muster room; Respondent appeared to become agitated and said that he wanted to hurt him, apparently referring to Van Putten (T. 164). Van Putten walked out of the muster room and went to the front desk, where he engaged in a conversation with Sergeant Luis Pena (*Id.*). Once the EMTs arrived and began assessing Respondent, he kept looking in the direction of the front

desk, saying that he wanted to "hurt him" (T. 165). One of the EMTs pointed to Van Putten at the front desk and asked Pena to have him step out of sight because it appeared his presence was causing Respondent to become agitated (T. 165).

Pena left the muster room, approached Van Putten and asked him to step away from the front desk (T. 166). Van Putten asked Pena why and she replied that Respondent had said he wanted to hurt him, referring to Van Putten (*Id.*, 177). Van Putten turned to walk toward the Commanding Officer's office when Pena heard voices saying, "Don't do it!" (T. 167). Pena stopped and turned toward the voices and saw Respondent removing the straps from the stair chair and numerous police officers attempting to hold him down (*Id.*).

Lieutenant Archie Van Putten testified that after he advised the precinct Commanding Officer that he would be issuing a command discipline to Respondent, he walked to the front desk, where he worked on some documents (T. 201). Van Putten then recalled Sergeants Eva Pena and Siria Henriquez rushing toward him and urging him to go to the Commanding Officer's office (T. 201). Van Putten then saw Officer Washington running past him, shouting, "Malcolm, chill!" (T. 202). When Van Putten's gaze followed Officer Washington's path, he observed EMTs and other police officers restraining Respondent (*Id.*). Van Putten observed Respondent looking at him and attempting to get up from the stair chair to come toward him (T. 203-204).

Respondent testified that on February 9, 2016, he was on limited duty as a result of his involvement in an off-duty motorcycle accident in July 2015 (T. 226). He received a court notification for February 9th on February 8th but did not seek approval of the notification that day (T. 229-230). On the morning of February 9th, Respondent reported

to the 42nd Precinct and informed the Desk Officer that he was going to court pursuant to the notification (T. 230). After being directed by the Assistant Integrity Control Officer, Respondent proceeded to the Bronx Criminal Court building and met with ADA Loilo.

After meeting with ADA Loilo and providing his memo book, Respondent started to feel pain related to the injuries he suffered in the motorcycle accident and he excused himself (T. 231). Respondent proceeded to his personal car with the intention of relaxing until the pain subsided (*Id.*). Although Respondent had been prescribed pain medication, he did not take it prior to reporting to court as he believed it would preclude him from testifying that day (T. 232). After sitting in his car for a short period of time. Respondent elected to go for a drive to a bank in the hope that the pain would subside by the time he returned to the courthouse (T. 233). While he was driving, Respondent received a text message from Sergeant Henriquez directing him to return to the 42nd Precinct and he did so (T. 234).

Respondent entered the muster room, where he eventually met with Sergeant Henriquez and Lieutenant Van Putten (*Id.*). Van Putten began to yell and curse at him, saying he “was tired of [his] shit,” and “[You] always do this” (T. 235). As Van Putten berated him, Respondent felt his body “freezing up” (T. 235). Respondent felt his arms become numb and his heart pounding (T. 236). Respondent then told Van Putten he needed to go to the hospital (*Id.*). Van Putten looked at Respondent, then told him to call his delegate because he was going to be suspended (*Id.*). Van Putten left the muster room with Sergeant Henriquez (*Id.*). Respondent began to feel worse and thought he might die (*Id.*).

After Sergeant Henriquez and Lieutenant Van Putten left the muster room, Police Officer Ners walked in and asked Respondent if he was okay (T. 237). When Respondent replied that he needed an ambulance, Officer Ners ran out of the room (*Id.*). Police Officer Buficio entered the room shortly thereafter, asked Respondent how he was doing and received a similar response (*Id.*). EMT personnel eventually arrived at the precinct and evaluated Respondent (*Id.*). Respondent's heart was pounding, he was having difficulty breathing and felt like he could not move his arms (T. 237-238). Respondent experienced difficulty getting into the stair chair, even with EMT assistance (T. 238).

As Respondent was being wheeled out of the precinct, he observed Van Putten looking at him, walking backwards and felt as if he was laughing at him (T. 239). Respondent wanted to "leave as fast as possible" and thought "[he] was going to die" (*Id.*). Respondent testified that "[he] didn't know if [he] could be considered not thinking rationally" (*Id.*). Respondent stated that he attempted to get up from the chair to exit the precinct as quickly as possible but that other police officers held him, preventing him from doing so (T. 240). Respondent denied desiring or attempting to hurt Van Putten (*Id.*).

On cross-examination, when asked if he admitted to investigators that he said the words, "I'm going to hurt him," Respondent replied, "I could have said that" (T. 266). When asked to whom he was referring, Respondent replied, "I wasn't referring to anybody" (T. 266-267).

I find that Sergeant Luis Pena, Sergeant Siria Henriquez, Jessy Garcia, Andrew Brock, Police Officer Fred Washington and Sergeant Eva Pena are disinterested

witnesses whose respective testimonies were forthright, logical and corroborative of each other.

I do not credit Respondent's testimony as it pertained to the contested allegations, as it was self-serving, fanciful and appeared calculated to elicit sympathy. Respondent's assertion that he could have uttered the words "I'm going to hurt him," but that he was not referring to anyone in particular, is disingenuous and unworthy of belief. His assertion that he extricated himself from the restraints of the stair chair in an attempt to leave the precinct even faster than he could be transported by the EMT personnel because of a fear that Lieutenant Van Putten would resume shouting at him is implausible and appears to be the product of afterthought.

I find that Respondent was not rendered unable to answer Lieutenant Van Putten's questions by any altered mental state; rather, he willfully remained silent when called upon in an official capacity to account for his whereabouts, as it was his duty to do.

The evidence that Sergeant Eva Pena heard Respondent say "I want to hurt him" several times shortly after the aforementioned confrontation resulted in Van Putten announcing Respondent's suspension; Jessy Garcia hearing Respondent saying "Get him away from me" several times; and Police Officer Washington hearing Respondent shout, "Are you laughing? Are you laughing," is sufficient evidence of Respondent's mental state for the tribunal to find that his words were an angry response to Lieutenant Van Putten's declared intention to suspend him. Accordingly, Respondent's actions of releasing his restraints, standing upright and attempting to move from the chair, combined with the credible evidence of the above-described statements attributed to him, were more likely than not an attempt to lash out at Lieutenant Van Putten in retribution.

for being held accountable for his unwillingness to account for his whereabouts. I further find that Respondent was well aware that Lieutenant was his senior ranking officer and that any attempt to engage him in an altercation was prejudicial to good order, efficiency or discipline of this Department.

Accordingly, I find Respondent Guilty of Specifications 1 and 4 of Disciplinary Case No. 2016-15245. I further find Respondent, based upon his pleas, Guilty of Specifications 1, 2, 3, 4, 5 and 6 of Disciplinary Case No. 2015-14565; and Specifications 2 and 3 of Disciplinary Case No. 2016-15245.

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. *See Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 14, 2009. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of attempting to engage an on-duty supervisor in a physical altercation and failing to answer a supervisor when asked about his whereabouts. He has also pled guilty to the following: (i) reporting late for duty four times, for a total of one hour and ten minutes; (ii) operating his personal vehicle in a reckless manner by driving his vehicle at a high rate of speed, through several steady red lights and stops signs without stopping; (iii) operating his personal vehicle in a reckless manner and failing to obey an order to stop and pull over; (iv) operating his personal vehicle in a reckless manner by driving through a steady red light; (v) failing to notify the Department that he was running late for duty, causing his command to be unaware of his whereabouts until approximately one hour after the start of his tour; (vi) operating a

motorcycle without a valid New York State Class M license; (vii) failing to notify the precinct Desk Officer that he was dismissed from Bronx Criminal Court and was not required to return for five hours; and (viii) failing to immediately return to the precinct after being dismissed from Bronx Criminal court for approximately three hours. The Department has requested that Respondent forfeit 32 days previously served on suspension, an additional 13 vacation days and a one-year term of dismissal probation. I agree.

The misconduct to which Respondent has pled guilty is *de minimis* when viewed next to the most serious charge of attempting to engage in a physical altercation with Lieutenant Van Putten. That does not mean, however, that an appropriate penalty should not be fashioned. Furthermore, the Court does not find the existence of any mitigating factors with regard to Respondent's guilty pleas. The following cases, some of which are negotiated penalties, provide some guidance: *Disciplinary Case No. 2014-11131 (January 26, 2015)* (Ten-year police officer with one prior adjudication negotiated a penalty of eight suspension days already served for operating his motor vehicle in a reckless manner); *Disciplinary Case No. 2008-84651 (August 6, 2010)* (four-year police officer with no prior disciplinary record negotiated a penalty of 30 vacation days for, while off duty, recklessly operating a motorcycle at a high rate speed on the Bronx River Parkway. In addition, Respondent did not have a motorcycle license, and the motorcycle license plate was improperly affixed); *Disciplinary Case No. 2008-84486 (March 26, 2012)* (Twenty-one year lieutenant with no prior disciplinary history forfeited five vacation days for arriving to work late or leaving work early without permission or authority, twice failing to sign in and/or out on the roll call, and receiving 45 minutes of

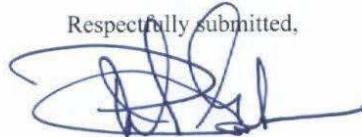
overtime compensation for work that he did not actually perform); *Disciplinary Case No. 2014-12558* (May 27, 2016) (Twelve-year sergeant with one prior adjudication forfeited 25 vacation days for being discourteous to a lieutenant and wrongfully absenting herself from police duties for approximately four hours. Respondent told a supervising officer that if he did not approve her lost time to leave, she would not come in for her scheduled midnight tour later that day. Respondent was scheduled to begin her tour at 0655 hours, but did not appear at the desk dressed in her uniform until 1100 hours and lacked a credible explanation as to why).

In 2012, a ten-year police officer forfeited 30 vacation days and was placed on one year dismissal probation for being discourteous to a lieutenant who had confronted the officer about taking an extended personal break. The officer in that case was found not guilty of engaging in a physical altercation with a Deputy Inspector, though a term of dismissal probation was still imposed (*Disciplinary Case No. 2010-86092* [July 24, 2012]).

Though Respondent has been found guilty of attempting to engage an on-duty supervisor in a physical altercation, rather than actually engaging in such an altercation, I find a similarly severe penalty is warranted. Respondent's behavior toward Lieutenant Van Putten necessitated that he be physically restrained by fellow officers and responding EMTs. Respondent's complete and utter disrespect for the chain of command, such that other officers had to intervene, is fundamentally incompatible with continued service as a police officer within the paramilitary organization of this Department. As such, I find that a term of one-year dismissal probation is necessary to impart upon Respondent the seriousness of maintaining the integrity of the chain of command.

Accordingly, the Court recommends that Respondent be ***DISMISSED*** from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Administrative Code §14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit the 32 suspension days previously served and an additional 13 vacation days.

Respectfully submitted,



Paul M. Gamble
Assistant Deputy Commissioner Trials

APPROVED

JUL 13 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MALCOLM HART
TAX REGISTRY NO. 948044
DISCIPLINARY CASE NO. 2015-14565 & 2016-15245

Respondent's last three annual performance evaluations were as follows: in 2015, he received an overall rating of 3.0 "Competent;" in 2014, he received an overall rating of 3.5 "Highly Competent/Competent;" and in 2013, he also received an overall rating of 3.5 "Highly Competent/Competent." He has not been awarded any medals. In his almost eight years of service, he has reported sick on six occasions, four of which were for line of duty injuries.

From February 11, 2016, to March 13, 2016, Respondent was suspended from duty as the result of the charges in Case No. 2016-15245. On June 30, 2016, Respondent was placed on Level 1 Discipline monitoring, which remains ongoing.

He has no prior disciplinary history.

A handwritten signature in black ink, appearing to read "Paul M. Gamble".

Paul M. Gamble
Assistant Deputy Commissioner Trials